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EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्रधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 8th March, 2002.

BILL NO. 13 OF 2002

A Bill to protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Protection from Domestic Violence Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "aggrieved person" means any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;

(b) "domestic violence" has the same meaning as assigned to it in section 4;

(c) "Magistrate" means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides;

(d) "monetary relief" means compensation which a Magistrate may order at any stage during the hearing of application seeking a protection order, to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence;

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "Protection Officer" means an officer appointed by the State Government under section 5;

(h) "protection order" means an order made under section 14;

(i) "relative" includes any person related by blood, marriage or adoption and living with the respondent;

(j) "respondent" means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be; and

(k) "service provider" means any voluntary association registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any means including legal aid, medical, financial or other assistance.

2 of 1974.

1 of 1956.

Act not in
derogation of
any other law.**3. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.**Domestic
violence.**CHAPTER II**
DOMESTIC VIOLENCE**4. (1) For the purposes of this Act, any conduct of the respondent shall constitute****domestic violence if he,—**

(a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

(b) forces the aggrieved person to lead an immoral life; or

(c) otherwise injures or harms the aggrieved person.

(2) Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.

CHAPTER III
PROTECTION OFFICERAppointment
of Protection
Officer.**5. (1) The State Government shall, by notification in the Official Gazette, appoint such number of Protection Officers in each district as it may consider necessary and shall notify the area or areas within which a Protection Officer shall exercise his powers and perform his duties under this Act.**

(2) The Protection Officer shall possess such qualifications as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and other officers and employees shall be such as may be prescribed.

6. (1) Where the Protection Officer, after enquiry, believes either *suo motu* or on the basis of information received from any person under sub-section (1) of section 8 that action should be taken, it shall be his duty to—

Duties of Protection Officer.

(a) inform the aggrieved person of right to apply for protection order under section 9;

(b) inform about a service provider in the area where the aggrieved person resides so that she may seek support and help from such service provider;

(c) inform the aggrieved person of her entitlement to legal services under the Legal Services Authorities Act, 1987;

39 of 1987.

(d) perform such other duties as may be prescribed or as may be ordered to be performed by the Magistrate.

(2) It shall also be the duty of the Protection Officer to entertain any request or application made or presented to him under the provisions of this Act by the aggrieved person or by any other person on behalf of the aggrieved person.

(3) The Protection Officer on receipt of an application under sub-section (2) shall, where so desired by the aggrieved person, endeavour to assist the aggrieved person and the respondent in an independent and impartial manner to reach an amicable settlement of the grievance under this Act.

(4) If no such settlement as stated in sub-section (3) is arrived at, the Protection Officer shall file an application to the Magistrate under this Act if so desired by the aggrieved person.

7. (1) A Protection Officer within the local limits for which he is appointed shall exercise such powers as may be conferred on him by or under this Act.

Powers of Protection Officer

(2) A Protection Officer may take assistance of any person while exercising his powers or discharging his duties under this Act.

(3) A Protection Officer authorised to discharge functions under this Act shall be deemed to be a Civil Court for the purposes of holding enquiries under this Act.

8. (1) Any person who has reason to believe that an act of domestic violence has been, is being, or is likely to be committed, may give information to the Protection Officer.

Information to Protection Officer and exclusion of liability.

(2) No liability, civil or criminal, shall be incurred by any person for information given in good faith for the purpose of sub-section (1).

CHAPTER IV

PROCEDURE FOR OBTAINING PROTECTION ORDER

9. (1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 14.

Application to Magistrate.

(2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.

(3) The Magistrate shall fix first date of hearing which shall not exceed fifteen days from the date of the receipt of the application by the Magistrate for consideration of the application.

Service of notice.

10. (1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate.

(2) A declaration in such form as may be prescribed, of the Protection Officer regarding service of notice shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

Counselling.

11. (1) The Magistrate at any stage of the proceedings under this Act may direct the respondent or the aggrieved person, either singly or jointly, to undergo mandatory counselling with any service provider.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

Assistance of welfare expert.

12. In any proceedings under this Act, the Magistrate may secure the services of such person, preferably a woman where available, whether related to parties or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

Proceedings to be held *in camera*.

13. The proceedings may be held *in camera*, if the Magistrate considers that the circumstances of the case so warrant, and shall be so held if either party so desires.

Passing of protection order.

14. (1) The Magistrate, after giving opportunity of being heard to the parties to the application, and after being satisfied that the aggrieved person is being subjected to domestic violence,—

(a) may pass the protection order by directing the respondent to,—

(i) refrain from committing any act of domestic violence; or

(ii) pay such monetary relief as the Magistrate deems just, and specify the period in the protection order within which the amount of such monetary relief is to be paid by the respondent to the person aggrieved; or

(b) pass such other direction as may be considered necessary.

(2) Subject to section 11, every endeavour shall be made by the Magistrate hearing the application under this Act to dispose of it within three months from the date of filing of the application.

(3) All evidence in any proceeding under this Act shall be taken in the presence of the respondent, or, when a personal attendance of the respondent is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases in the Code of Criminal Procedure, 1973:

2 of 1974.

Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service of notice, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*.

(4) A copy of the protection order shall be forwarded to the Protection Officer and parties to the application.

(5) Where the Magistrate is satisfied that circumstances stated in the application presented under section 9 are such so as to justify the immediate intervention of the Magistrate to restrain the respondent from committing domestic violence, the Magistrate may issue an interim protection order directing the respondent to restrain from engaging in any act of domestic violence, and the Magistrate may further require the respondent to show cause as to why he should not be ordered to execute a bond, with or without sureties, for maintaining domestic peace for such period as the Magistrate thinks fit.

Duration and alteration of protection order.

15. (1) A protection order made under section 14 shall be in force in the first instance for such period as the Magistrate may fix but not exceeding two years.

(2) The protection order, for reasons to be recorded in writing, may be altered, modified, varied or revoked, on an application either by the aggrieved person or the respondent provided that the Magistrate is satisfied that there is a change in the circumstances that requires such alteration, modification, variation or revocation, as the case may be.

CHAPTER V

MISCELLANEOUS

45 of 1860.

16. There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be. Appeal.

17. Every Protection Officer, when acting or purporting to act under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. Protection Officer to be public servant.

18. A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both. Penalty for breach of protection order by respondent.

19. If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both. Penalty for not discharging duties by Protection Officer.

20. No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf. Cognizance of offence committed by Protection Officer.

21. No suit, prosecution or other legal proceedings shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule made thereunder. Protection of action taken in good faith.

22. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) qualifications, terms and conditions of service for the appointment of Protection Officers, other officers and employees and their duties under section 5;
- (b) duties of the Protection Officer under section 6;
- (c) prescribing the form in which the application may be presented under subsection (2) of section 9;
- (d) the form and manner in which notice may be served on the respondent and other persons by the Protection Officer under section 10; and
- (e) any other matter in connection with or in relation to this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.

3. With a view to providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed. The main features as contained in the Bill are as follows:—

(i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;

(ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;

(iii) the Magistrate may even require as an interim and urgent measure from the relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;

(iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;

(v) it is being proposed to set up an institution of Protection Officer to help the victim of domestic violence in making application to the Magistrate and in availing of her other legal rights;

(vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and

(vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 14th February, 2002.

MURLI MANOHAR JOSHI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (2) and (3) of clause 5 seek to confer power on the Central Government to make rules for prescribing qualification, terms and conditions of service of the Protection Officer and other officers subordinate to him. Clause 6 prescribes duties of Protection Officer in addition to the duties which the Central Government can impose on them by virtue of powers conferred by sub-clause (1) of the said clause. Sub-clause (2) of clause 9 confers power on the Central Government to make rules for prescribing the form in which the application may be presented by the aggrieved person to the Magistrate. Sub-clauses (1) and (2) of clause 10, confer power on the Central Government to make rules regarding service of notice on respondent. Clause 22, *inter alia*, confers power on the Central Government to make rules for carrying out the purposes of the Bill, and for any other matter in connection or in relation to the Bill.

2. The matter in respect of which provision may be made in the rules are generally matters of procedure and detail. The delegation of legislative power, is therefore, of a normal character.

FINANCIAL MEMORANDUM

The provisions of the Protection from Domestic Violence Bill, 2002 will be enforced through the existing machinery of the States and the Union territories. It is not envisaged to create any new post at any level. Therefore, no expenditure is involved from the Consolidated Fund of India.

II

BILL NO. 7 OF 2002

A Bill further to amend the Salaries and Allowances of Officers of Parliament Act, 1953 and the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Salaries and Allowances of Officers of Parliament and Leaders of Opposition in Parliament (Amendment) Act, 2002.

Short title
and com-
mencement.

(2) It shall be deemed to have come into force on the 17th day of September, 2001.

CHAPTER II

AMENDMENT TO THE SALARIES AND ALLOWANCES OF OFFICERS OF PARLIAMENT

Act, 1953

Amendment
of section 5
of Act 20 of
1953.

2. In section 5 of the Salaries and Allowances of Officers of Parliament Act, 1953, the following proviso shall be inserted, namely:—

“Provided that on and from the 17th day of September, 2001, the sumptuary allowance shall be paid to—

(a) the Speaker of the House of the People at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet;

58 of 1952.

(b) the Deputy Chairman and the Deputy Speaker at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to a Minister of State.”.

58 of 1952.

CHAPTER III

AMENDMENT TO THE SALARY AND ALLOWANCES OF LEADERS OF OPPOSITION IN PARLIAMENT ACT, 1977

Amendment
of section 3
of Act 33 of
1977.

3. In section 3 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that on and from the 17th day of September, 2001, the sumptuary allowance shall be paid to each Leader of the Opposition at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet.”.

58 of 1952.

STATEMENT OF OBJECTS AND REASONS

The amount of sumptuary allowance payable to the Prime Minister, every other Minister who is a member of the Cabinet, a Minister of State and a Deputy Minister has been increased with effect from the 17th September, 2001 by amending the Salaries and Allowances of Ministers Act, 1952.

2. The Speaker of the House of the People and each Leader of the Opposition in Lok Sabha and Rajya Sabha are being paid a sumptuary allowance of one thousand rupees per mensem as per provisions contained in section 5 of the Salaries and Allowances of Officers of Parliament Act, 1953 and sub-section (3) of section 3 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977. The Deputy Chairman of the Council of States and the Deputy Speaker of the House of the People are being paid a sumptuary allowance of five hundred rupees per mensem each as per provisions contained in section 5 of the Salaries and Allowances of Officers of Parliament Act, 1953.

3. The Speaker of the House of the People and each Leader of the Opposition in Lok Sabha and Rajya Sabha were being paid, before the commencement of the Salaries and Allowances of Ministers (Amendment) Act, 2001, a sumptuary allowance equal to the amount payable to every other Minister who is a member of the Cabinet. Similarly, the Deputy Chairman and the Deputy Speaker were being paid, before the commencement of the Salaries and Allowances of Ministers (Amendment) Act, 2001, a sumptuary allowance equal to the amount payable to a Minister of State. Since the sumptuary allowance payable to every other Minister who is a member of the Cabinet and to a Minister of State has been increased by the said Act, it is proposed to provide that the sumptuary allowance shall be paid, with effect from the 17th September, 2001, to—

(a) the Speaker of the House of the People at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet;

(b) the Deputy Chairman and the Deputy Speaker at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to a Minister of State;

(c) each Leader of the Opposition at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

PRAMOD MAHAJAN.

The 15th February, 2002.

FINANCIAL MEMORANDUM

Clauses 2 and 3 of the Bill seek to amend sections 5 and 3 of the Salaries and Allowances of Officers of Parliament Act, 1953 and the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 respectively and these have financial implications.

2. The proposed provisions provide for increased amount of rupees two thousand per mensem as sumptuary allowance to the Speaker of the House of the People and each Leader of the Opposition in Lok Sabha and Rajya Sabha respectively at par with a Cabinet Minister. Similarly, the Deputy Chairman of the Council of States and the Deputy Speaker of the House of the People have been allowed a sumptuary allowance of rupees one thousand per mensem each at par with a Minister of State. These provisions would involve expenditure to the tune of rupees sixty-four thousand out of which rupees forty-eight thousand will be recurring expenditure and rupees sixteen thousand non-recurring expenditure as the increased amount of sumptuary allowance is proposed to be allowed retrospectively from 17-9-2001.

3. The provisions of the Bill do not involve any other recurring or non-recurring expenditure.

III

BILL NO. 11 OF 2002

A Bill further to amend the Constitution (Scheduled Castes) Order, 1950.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Castes) Order (Amendment) Act, 2002. Short title.

2. The Schedule to the Constitution (Scheduled Castes) Order, 1950 is hereby amended in the manner and to the extent specified hereunder, namely:—

(a) in PART XIII.—*Orissa*,—

(i) omit entry 22;

(ii) omit entry 90;

(iii) after entry 93, insert—

“94. **Mangali (in Koraput and Kalahandi districts);**

95. Mirgan (in Navrangpur district).”;

Amendment of
the Constitution
(Scheduled
Castes) Order,
1950.

(b) in PART XIV.—*Punjab*,—

(i) for entry 9, substitute—

“9. **Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, Ravidasi, Ramdasia, Ramdasia Sikh, Ravidasia, Ravidasia Sikh.**”;

(ii) after entry 37, insert—

“38. **Mochi.**”;

(c) in PART XIX.—*West Bengal*,—

(i) for entry 22, substitute—

“22. **Hari, Mehtar, Mehtor, Bhangi, Balmiki.**”;

(ii) after entry 59, insert—

“60. **Chain (in Malda, Murshidabad, Nadia and South Dinazpur districts).**”.

STATEMENT OF OBJECTS AND REASONS

As per the provisions of article 341 of the Constitution, the list of the Scheduled Castes was first notified in 1950 and this list was modified from time to time. A number of requests were received from the State Governments for modifications in the list, such as, inclusion of new castes based on social, educational and economic backwardness, inclusion of synonyms in respect of a caste in the existing list and deletion of communities from the existing list.

2. The above requests have been processed as per the modalities approved by the Central Government on 15th June, 1999. After consultation with the concerned State Governments, the Registrar General of India and the National Commission for the Scheduled Castes and the Scheduled Tribes, the lists of the Scheduled Castes in respect of eight communities for the States of Orissa, Punjab and West Bengal are proposed to be amended keeping in view the present social and economic conditions of these communities.

3. The proposed amendments in the Constitution (Scheduled Castes) Order (Amendment) Bill, 2002 broadly fall under the following categories, namely:—

- (i) inclusion of new castes based on social, educational and economic backwardness;
- (ii) inclusion of synonyms in respect of a caste in the existing list;
- (iii) deletion of communities from the existing list.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

SATYANARAYAN JATTYA.

The 20th February, 2002.

FINANCIAL MEMORANDUM*

The Bill seeks to include fresh entries as well as synonyms in existing entries in respect of six communities in the list of Scheduled Castes for Orissa, Punjab and West Bengal and deletion of two communities from the list of Scheduled Castes for Orissa. This will entail additional recurring and non-recurring expenditure on account of benefits to be provided to the persons belonging to the communities to be included, under continuing schemes meant for welfare of the Scheduled Castes.

2. It is not possible to estimate the likely additional expenditure to be incurred on this account at this stage. However, the expenditure, whether recurring or non-recurring will be met out of the Consolidated Fund of India.

IV**BILL NO. 8 OF 2002**

A Bill to amend the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2002.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of section 2.

2. In section 2 of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (hereinafter referred to as the principal Act),—

41 of 1992.

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) “advertisement” includes any notice, circular, label, wrapper or any other document or visible representation or announcement made by means of any light, sound, smoke or gas or by means of electronic transmission or by audio or visual transmission;”;

(ii) in clause (d), for the words “but does not include a pharmacy or drug store”, the words “a pharmacy, drug store and any association of health workers” shall be substituted;

(iii) in clause (f), for the words “after the age of four months”, the words “after the age of six months and up to the age of two years” shall be substituted;

(iv) in clause (g), for the words “, whether or not it is suitable for such replacement”, the words “for infant up to the age of two years” shall be substituted;

(v) after clause (i), the following clause shall be inserted, namely:—

“(j) “promotion” means to employ directly or indirectly any method of encouraging any person to purchase or use infant milk substitute, feeding bottle or infant food.”.

Amendment
of section 3.

3. In section 3 of the principal Act,—

(i) in clause (a), for the words “or feeding bottles”, the words “, feeding bottles or infant foods” shall be substituted;

(ii) in clause (b), for the words “infant milk substitutes is”, the words “infant milk substitutes and infant foods are” shall be substituted;

(iii) for clause (c), the following clause shall be substituted, namely:—

“(c) take part in the promotion of infant milk substitutes, feeding bottles or infant foods;”.

Amendment
of section 4.

4. In section 4 of the principal Act, for the words “feeding bottles”, at both the places where they occur, the words “feeding bottles or infant foods” shall be substituted.

Amendment
of section 5.

5. In section 5 of the principal Act, for the words “feeding bottles”, at both the places where they occur, the words “feeding bottles or infant foods” shall be substituted.

Amendment
of section 7.

6. In section 7 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Every educational or other material”, the words “Every educational or other material including advertisements or material relating to promotion of infant milk substitutes, feeding bottles and infant foods” shall be substituted;

(ii) after clause (f), the following clause shall be inserted, namely:—

“(fa) the date of printing and publication of such material and the name of the printer and publisher;”;

(b) in sub-section (2), for the words “feeding bottles”, the words “feeding bottles or infant foods” shall be substituted.

7. In section 9 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment
of section 9.

“(2) No producer, supplier or distributor referred to in sub-section (1), shall offer or give any contribution or pecuniary benefit to a health worker or any association of health workers, including funding of seminar, meeting, conference, educational course, contest, fellowship, research work or sponsorship.”.

8. In section 20 of the principal Act, for the word and figures “section 11”, at both the places where they occur, the words and figures “section 11 and the rules made under section 26 of the Act” shall be substituted.

Amendment
of section 20.

9. In section 24 of the principal Act, after the words “or of any State Government”, the words, brackets, letter and figures “or a representative of such voluntary organisation which is notified under clause (c) of sub-section (1) of section 21” shall be inserted.

Amendment
of section 24

STATEMENT OF OBJECTS AND REASONS

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 was enacted with a view to protecting and promoting breastfeeding and ensuring proper use of infant foods. During the course of implementation of the provisions of the enactment over the years, it has been found that some aspects have led to difficulties, which need to be clearly spelt out. The recent developments and findings of international agencies as well as researchers have revealed that ideally, the infant thrives best on exclusive breastfeeding for the first six months of life, as well as continued breastfeeding together with complementary foods for the first two years. The World Health Organisation by World Health Assembly Resolution No. 47.5 dated the 9th May, 1994 called upon all Member Nations to aim at achieving this goal. The said resolution, *inter alia*, required Member Nations to foster appropriate complementary feeding practices for the infants from the age of about six months and encourage continued breastfeeding as well as proper feeding with safe and adequate amounts of local foods until the infant attains the age of two years.

2. In order to review and suggest appropriate amendments in the said Act, the Department of Women and Child Development constituted a Task Force comprising of representatives from various Ministries and Departments of the Central Government and Voluntary Agencies authorised under section 21 of the Act. The National Commission for Women has also considered the provisions of the Act and suggested certain modifications therein.

3. Taking into consideration the recommendations of the said Task Force and of the National Commission for Women and the difficulties being experienced in the implementation of the provisions of the Act, it has become necessary to amend the existing provisions so as to encourage continued breastfeeding and to prohibit all forms of advertising and promotion—light, sound, smoke or gas or by means of electronic transmission by audio or visual transmission in relation to infant milk substitutes, feeding bottles and infant foods.

4. The Bill seeks to achieve the aforesaid objects.

NEW DELHI,
The 1st February, 2002.

MURLI MANOHAR JOSHI.

V**BILL NO. 5 OF 2002**

A Bill to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Prevention of Terrorism Act, 2002.
(2) It extends to the whole of India.
(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.
(4) Any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

Short title,
extent,
application,
commencement,
duration and
savings.

(5) The provisions of this Act apply also to—

- (a) citizens of India outside India;
- (b) persons in the service of the Government, wherever they may be; and
- (c) persons on ships and aircrafts, registered in India, wherever they may be.

(6) Save as otherwise provided in respect of entries at serial numbers 24 and 25 of the Schedule to this Act, it shall be deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect—

- (a) the previous operation of, or anything duly done or suffered under this Act, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act, or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

Definitions

2. (1) In this Act, unless the context otherwise requires,—

- (a) "Code" means the Code of Criminal Procedure, 1973;
- (b) "Designated Authority" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government or, as the case may be, the State Government, by a notification published in the Official Gazette;
- (c) "proceeds of terrorism" shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found;
- (d) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets and includes bank account;
- (e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;
- (f) "Special Court" means a Special Court constituted under section 23;
- (g) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;
- (h) "State Government", in relation to a Union territory, means the Administrator thereof;
- (i) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

PUNISHMENT FOR, AND MEASURES FOR DEALING WITH, TERRORIST ACTIVITIES

3. (1) Whoever,—

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act.

Explanation.—For the purposes of this sub-section, “a terrorist act” shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Punishment
for terrorist
acts.

Explanation.—For the purposes of this sub-section, “terrorist organisation” means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

Possession of certain unauthorized arms, etc.

4. Where any person is in unauthorized possession of any,—

(a) arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,

(b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfar in any area, whether notified or not,

he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—In this section, “notified area” means such area as the State Government may, by notification in the Official Gazette, specify.

Enhanced penalties.

5. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952 or the Arms Act, 1959, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

4 of 1884
6 of 1908.
20 of 1952.
54 of 1959.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to “imprisonment for life” shall be construed as a reference to “imprisonment for ten years”.

Holding of proceeds of terrorism illegal.

6. (1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

Powers of investigating officers and appeal against order of Designated Authority

7. (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) For the removal of doubts, it is hereby provided that where an organisation is declared as a terrorist organisation under this Act and the investigating officer has reason

to believe that any person has custody of any property which is being used or is intended to be used for the purpose of such terrorist organisation, he may, by an order in writing, seize or attach such property.

(3) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(4) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(5) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(6) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Act;

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins and notes in any currency;

(b) postal orders;

(c) traveller’s cheques;

(d) banker’s drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(7) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Special Court and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

8. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Special Court is satisfied in this regard under sub-section (7) of section 7, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act

Forfeiture of
proceeds of
terrorism.

9. (1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

Issue of show
cause notice
before
forfeiture of
proceeds of
terrorism.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

Appeal.

10. (1) Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against, is situated.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

Order of
forfeiture not
to interfere
with other
punishments.

11. The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

Claims by
third party.

12. (1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be forfeited under the Act, the said notice shall be withdrawn or modified accordingly.

Powers of
Designated
Authority.

13. The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

Obligation to
furnish
information.

14. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) Failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

Certain
transfers to be
null and void.

15. Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Act, be

ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

16. (1) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Act.

Forfeiture of
property of
certain
persons.

(2) Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

1 of 1956.

17. Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Act, then, the company shall, on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

Company to
transfer shares
to Govern-
ment.

CHAPTER III

TERRORIST ORGANISATIONS

18. (1) For the purposes of this Act, an organisation is a terrorist organisation if—

- (a) it is listed in the Schedule, or
- (b) it operates under the same name as an organisation listed in that Schedule

(2) The Central Government may by order, in the Official Gazette,—

- (a) add an organisation to the Schedule;
- (b) remove an organisation from that Schedule;
- (c) amend that Schedule in some other way.

(3) The Central Government may exercise its power under clause (a) of sub-section (2) in respect of an organisation only if it believes that it is involved in terrorism.

(4) For the purposes of sub-section (3), an organisation shall be deemed to be involved in terrorism if it—

- (a) commits or participates in acts of terrorism,
- (b) prepares for terrorism,
- (c) promotes or encourages terrorism, or
- (d) is otherwise involved in terrorism.

19. (1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18 to remove an organisation from the Schedule.

Denotification
of a terrorist
organisation.

(2) An application may be made by—

- (a) the organisation, or
- (b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under

sub-section (1) of section 60 within one month from the date of receipt of the order by the applicant.

(5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order under this sub-section.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

Offence relating to membership of a terrorist organisation.

20. (1) A person commits an offence if he belongs or professes to belong to a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

Offence relating to support given to a terrorist organisation.

21. (1) A person commits an offence if—

(a) he invites support for a terrorist organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

(a) to support a terrorist organisation, or

(b) to further the activities of a terrorist organisation, or

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities.

(4) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both

Explanation.—For the purposes of this section, the expression “meeting” means a meeting of three or more persons whether or not the public are admitted.

Fund raising for a terrorist organisation to be an offence.

22. (1) A person commits an offence if he—

(a) invites another to provide money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(2) A person commits an offence if he—

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person commits an offence if he—

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years or with fine or with both.

CHAPTER IV

SPECIAL COURTS

23. (1) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

Special Courts.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

24. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting:

Place of
sitting.

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

**Jurisdiction of
Special
Courts.**

25. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

(2) If, having regard to the exigencies of the situation prevailing in a State,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

**Power of
Special Courts
with respect
to other
offences.**

26. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or such rule or, as the case may be, under such other law.

**Power to
direct for
samples, etc.**

27. (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided in sub-section (1), the Court shall draw adverse inference against the accused.

**Public
Prosecutors.**

28. (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

29. (1) Subject to the provisions of section 50, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

Procedure and powers of Special Courts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

30. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera* if the Special Court so desires.

Protection of witnesses.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by
Special Courts
to have
precedence.

31. The trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Certain
confessions
made to
police officers
to be taken
into consid-
eration

32. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made thereunder.

1 of 1872.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

Power to
transfer cases
to regular
courts

33. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

34. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation.—For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

35. (1) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted under section 23, in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(2) On and from the date when the Special Court is constituted under section 23, every trial under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

Transitional provisions and transfer of pending proceedings.

CHAPTER V

INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

36. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "electronic communication" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include,—

- (i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit; or
- (ii) any wire or oral communication; or
- (iii) any communication made through a tone only paging device; or
- (iv) any communication from a tracking device;

(b) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(c) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(d) "wire communication" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

37. The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in the case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this Chapter.

Appointment of Competent Authority.

38. (1) A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

(2) Each application shall include the following information:—

Application for authorisation of interception of wire, electronic or oral communication.

(a) the identity of the investigating officer making the application, and the head of the department authorising the application;

(b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including—

- (i) details as to the offence of terrorist act that has been, is being, or is about to be, committed;
- (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
- (iii) a particular description of the type of communications sought to be intercepted; and
- (iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(c) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorisation of interception should not automatically terminate after the described type of communication has been first obtained;

(d) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(e) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

Decision by
Competent
Authority on
application
for intercepti-
on.

39. (1) Upon such application, the Competent Authority may reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that—

- (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit, a particular offence described and made punishable under sections 3 and 4 of this Act;
- (b) there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception;
- (c) there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in, the name of or commonly used by such person.

(2) Each order by the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify—

- (a) the identity of the person, if known, whose communications are to be intercepted;
- (b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;
- (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;
- (d) the identity of the agency authorised to intercept the communications, and the person authorising the application; and

(e) the period of time during which such interception is authorised, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

40. (1) The Competent Authority shall, immediately after passing the order under sub-section (1) of section 39, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 60 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

Submission of Order of Interception to Review Committee.

(2) An order authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

41. (1) No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days and such sixty days period shall begin on the day immediately preceding the day on which the investigating officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

Duration of an order of interception, etc.

(2) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (1) of section 38 and the Competent Authority making the findings required by sub-section (1) of section 39, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(3) Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimise the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on the expiry of the period of said order or extension thereof.

42. (1) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

Authority competent to carry out Interception.

(2) Whenever an order authorising an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

43. (1) Notwithstanding anything contained in any other provision of this Chapter, an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank who reasonably determines that—

Interception of communication in emergency.

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person; or

(ii) conspiratorial activities threatening the security or interest of the State; or

(iii) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained, and

(b) there are grounds on which an order should be issued under this section to authorise such interception,

may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 38 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the interception made under sub-section (1), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier; and in the event of an application for permitting interception being rejected under sub-section (1) of section 39 or an application under sub-section (1) of this section for approval being rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

Protection of information collected.

44. (1) The contents of any wire, electronic or oral communication intercepted by any means authorised by this Chapter shall, as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

(2) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(3) Applications made and orders issued under this Chapter shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

Admissibility of evidence collected through the interception of communications.

45. Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Review of authorisation order.

46. (1) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 39.

(2) Every order passed by the Competent Authority under section 39, or disapproved by the officer under section 43, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

47. Except as otherwise specifically provided in section 39, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 39;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter;

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 46,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

48. (1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of—

(a) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(b) the number of such applications permitted or rejected;

(c) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(d) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

Interception
and disclosure
of wire,
electronic or
oral communi-
cations
prohibited.

Annual report
of intercep-
tions

(2) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(3) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year:

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report.

CHAPTER VI

MISCELLANEOUS

Modified application of certain provisions of the Code.

49. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely :—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (6) of this section shall apply.

(8) The restrictions on granting of bail specified in sub-sections (6) and (7) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in sub-sections (6), (7) and (8), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

50. No court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or, as the case may be, the State Government.

Cognizance of offences.

51. Notwithstanding anything contained in the Code, no police officer,—

Officers competent to investigate offences under this Act

(a) in the case of the Delhi Special Police Establishment, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under this Act.

52. (1) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

Arrest.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

53. (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved—

Presumption as to offences under section 3

(a) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

Bar of jurisdiction of courts, etc.

54. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sections 19 and 40 of the Act.

Saving.

55. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

Overriding effect.

56. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Protection of action taken in good faith.

57. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act:

Provided that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

Punishment and compensation for malicious action.

58. (1) Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(2) If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

Impounding of passport and arms licence of person charge-sheeted under the Act.

59. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the Special Court may deem fit.

Review Committees.

60. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Act.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairperson with the concurrence of the Chief Justice of the concerned High Court.

61. The High Courts may, by notifications in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Act relating to Special Courts within their territories.

Power of High Courts to make rules

62. (1) Without prejudice to the powers of the High Courts to make rules under section 61, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of—

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon—

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or —

(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(g) determination of the price of the forfeited property under sub-section (2) of section 10;

(h) the procedure of making application under sub-section (3) of section 19; and

(i) the qualifications of the members of the Review Committee under sub-section (2) of section 60.

Orders and
rules to be laid
before Houses
of Parlia-
ment.

63. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

Repeal and
saving.

64. (1) The Prevention of Terrorism (Second) Ordinance, 2001 is hereby repealed.
(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Ord.
12 of 2001.

THE SCHEDULE

(See section 18)

TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAIIRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/KARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LIBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEIYAOL KANBALUP (KYKL)
18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)—PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS.

Explanation.—For the purposes of this Schedule, serial numbers 24 and 25 shall be deemed to have been included with effect from the date of publication of S.O. No. 1194(E), dated the 5th December, 2001.

STATEMENT OF OBJECTS AND REASONS

The country faces multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross-border terrorist activities and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world. The reach and methods adopted by terrorist groups and organisations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The existing criminal justice system is not designed to deal with the types of heinous crimes with which the proposed law deals with.

2. In view of the situation, as stated above, it was felt necessary to enact a legislation for the prevention of, and for dealing with terrorists' activities. However, sufficient safeguards are sought to be provided in the proposed law to prevent the possibility of its misuse. Parliament was not in session and the circumstances existed which rendered it necessary for the President to promulgate the Prevention of Terrorism Ordinance, 2001 on 24th October, 2001. During the Winter Session of Parliament in December, 2001 steps were taken for the introduction of the Prevention of Terrorism Bill, 2001 in the Lok Sabha. However, the Bill could not be introduced and considered in the Lok Sabha as Parliament adjourned *sine die* on 19th December, 2001. The terrorist attack on Parliament House on 13th December, 2001 and the prevailing circumstances rendered it necessary for the President to promulgate the Prevention of Terrorism (Second) Ordinance, 2001 on 30th December, 2001 with a view to give continuity to the Prevention of Terrorism Ordinance, 2001 promulgated on 24th October, 2001.

3. The Prevention of Terrorism Bill, 2002 seeks to replace the Prevention of Terrorism (Second) Ordinance, 2001.

NEW DELHI;

L. K. ADVANI.

The 7th February, 2002

Notes on clauses

Clause 1.—This clause makes provision for short-title, extent, application, commencement, duration and savings. Sub-clause (4) makes the provisions of the Bill applicable to any person even beyond India if he commits an offence punishable under this legislation.

Clause 2.—This clause makes provision for the definition of the terms used in the Bill. Sub-clause (1)(c) defines 'proceeds of terrorism' as all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act which will include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found.

Clause 3.—This Clause defines the acts of terrorism which are punishable under the Bill. This clause makes provisions for punishment for terrorist acts. It provides for—

- (i) punishment of death or imprisonment for life to a person who has committed a terrorist act which has resulted in the death of any person [Sub-clause (2)(i)];
- (ii) punishment to a person who conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act [Sub-clause (3)];
- (iii) punishment to a person who voluntarily harbours or conceals any person knowing that such a person is a terrorist. The proviso to sub-clause (4) exempts any case in which the harbour or concealment is by the husband or wife of the offender [Sub-clause (4)];
- (iv) punishment to a member of a terrorist gang or terrorist organisation which is involved in terrorist acts [Sub-clause (5)];
- (v) punishment to a person who knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds [Sub-clause (6)]; and
- (vi) protection of the witness by providing for punishment to a person who threatens a witness with violence or wrongfully restrains or confines the witness or commits any unlawful act with the above intention [Sub-clause (7)].

Clause 4.—This clause provides for punishment to a person who is in unauthorised possession of arms and ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area. This clause also provides for punishment of unauthorised possession of bombs, dynamite or hazardous explosive substances or other lethal weapons of mass destruction or biological or chemical substances of warfare in any area.

Clause 5.—This clause provides for enhanced penalties to a person who with intention to aid any terrorist contravenes any provision of or the rules made under the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952 or the Arms Act, 1959.

Clause 6.—This clause bars the holding or possession of any proceeds of terrorism by any person.

Clause 7.—This clause empowers an officer not below the rank of Superintendent of Police investigating an offence committed under this Bill to make an order with the prior approval of the Director General of Police of the State, seizing such property or an order of attachment where it is not practicable to seize that property which he has reason to believe in relation to which an investigation is being conducted, represents proceeds of terrorism.

Sub-clause (6) of this clause empowers the investigating officer to seize and detain any cash if he has reasonable grounds for suspecting that (a) it is intended to be used for the purposes of terrorism; (b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Bill.

The proviso to this sub-clause provides that the cash seized shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Under sub-clause (7), any person aggrieved by the order of the Designated Authority may prefer an appeal to the Special Courts.

Clause 8.—This clause provides for forfeiture of proceeds of terrorism by the Special Court.

Clause 9.—This clause provides that a show-cause notice shall be given in writing before an order forfeiting any proceeds of terrorism is made under clause 8.

Clause 10.—This clause provides for appeal to the High Court within one month, against the order of the Special Court for forfeiture under clause 8.

Clause 11.—This clause provides that the order of forfeiture under clause 8 does not interfere with other punishments which the person affected is liable under this Bill.

Clause 12.—This clause provides for investigation by the Designated Authority into the claim or objection preferred to the seizure of any property under clause 7.

Clause 13.—This clause confers the powers of a civil court on the Designated Authority.

Clause 14.—This clause provides that an officer investigating any offence under this Bill, with the prior approval in writing of an officer not below the rank of Superintendent of Police, may require any officer or authority of the Central Government, or a State Government or a local authority or bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information would be useful or relevant to the purposes of the Bill.

Sub-clause (2) of this clause provides for punishment for failure to furnish information called for under sub-clause (1) or for deliberately furnishing false information.

Clause 15.—This clause provides that after the issue of an order under clause 7 or issue of a show cause notice under clause 9, transfer of a property referred to in the said order or notice shall be deemed to be null and void.

Clause 16.—This clause provides that it shall be open to the Special Court trying any person accused of an offence under this Bill to pass an order attaching all or any of the properties, movable or immovable or both belonging to him during the period of the trial.

Clause 17.—This clause provides that where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, the company shall forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares notwithstanding the provisions in the Companies Act, 1956 or the article of association of the company.

Clause 18.—This clause provides for declaration of an organisation as a terrorist organisation.

Clause 19.—This clause provides for application for de-notification of a terrorist organisation.

Clauses 20 to 22.—These clauses provide for offences relating to membership of a terrorist organisation, support and fund raising for terrorist organisations.

Clauses 23 to 27.—These clauses provide for constitution of Special Courts to try offences committed under this Bill, their jurisdiction and powers with respect to other offences.

Clause 28.—This clause provides for appointment of a Public Prosecutor for every Special Court.

Clause 29.—This clause provides for procedure and powers of the Special Courts.

Clause 30.—This clause makes provision for protection of witnesses.

Clause 31.—This clause provides that trial of any offence under this Bill by a Special Court against accused gets precedence over trial of any other offence in any other court (not being Special Court).

Clause 32.—This clause provides for admissibility of confessions made to a police officer under certain conditions that such confessions have to be made before a police officer not lower in rank than a Superintendent of Police and unlike as in the Terrorist and Disruptive Activities (Prevention) Act 1987 have to be further recorded with a Chief Judicial Magistrate within forty-eight hours.

Clause 33.—This clause provides that a Special Court may transfer the trial of the case to a regular court if the Special Court is of the opinion that the offence is not triable by it.

Clause 34.—This clause provides for appeal against any judgment, sentence or order not being an interlocutory order in nature.

Clause 35.—This clause provides that until a Special Court is constituted under clause 23, in the case of any offence punishable under this Bill, notwithstanding anything contained in the Code of Criminal Procedure, 1973 be exercised by the Court of Session of the division in which such offence has been committed.

Clause 36.—This clause provides for definitions of ‘electronic communication’, ‘intercept’, ‘oral communication’ and ‘wire communication’ for the purposes of the clauses in Chapter V dealing with interception of communications in certain cases.

Clause 37.—This clause provides for appointment of the Competent Authority for the purposes of Chapter V.

Clauses 38 and 39.—These clauses provide for the procedure and decision for interception of the wire, electronic and oral communications.

Clause 40.—This clause provides that the Competent Authority which has passed an order under sub-clause (1) of clauses 39, may submit a copy of the order within the stipulated time to the Review Committee constituted under clause 60.

Clause 41.—This clause provides for the duration of an order of interception of electronic, wire and oral communications.

Clause 42.—This clause provides that an interception of communications under Chapter V may be conducted by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception of communications.

Clause 43.—This clause provides that an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank may authorise interception of communications under Chapter V without the prior permission of the Competent Authority under certain circumstances and conditions.

Clause 44.—This clause provides for protection of information collected through interception of communications under Chapter V.

Clause 45.—This clause provides that the evidence collected through interception of communications under Chapter V is admissible as evidence against the accused in the court during the trial of a case.

Clause 46.—This clause provides that the Review Committee constituted by the Central Government or the State Government, as the case may be, review every order passed by the Competent Authority under clause 39.

Clause 47.—This clause prohibits unauthorised interception of communications and also disclosure of intercepted communications to unauthorised persons. This clause also provides for punishment for its violation.

Clause 48.—This clause provides that the Central Government and the State Governments, as the case may be, shall prepare a annual report of the full account of the applications for interception of communications, the number of such applications permitted or rejected, number of interception of communications carried out in emergency situation and the number of prosecutions and convictions resulting from such interception of communications. Such annual reports are to be laid before each House of Parliament or State Legislature, as the case may be, within the stipulated time.

Clause 49.—This clause provides for modified application of sections 2, 167, 268, 366, 367, 371 and 438 of the Code of Criminal Procedure, 1973 in case of a proceeding under this Bill.

Clause 50.—This clause provides that no court shall take cognizance of any offence under this Bill without the previous sanction of the Central Government or the State Governments as the case may be.

Clause 51.—This clause provides that no police officer below the rank of the Deputy Superintendent of Police or equivalent rank is competent to investigate an offence under this Bill.

Clause 52.—This clause provides for the procedure of arrest of a person under this Bill.

Clause 53.—This clause provides that the Special Court may draw adverse inference against the accused if arms or explosives or any other substances specified in clause 4 are recovered from the possession of the accused or the finger-prints of the accused are found at the place of the offence.

Clause 54.—This clause bars jurisdiction of civil court or any other authority in relation to matters related to clauses 19 and 40 of this Bill.

Clause 55.—This clause provides that the jurisdiction excisable by, and the procedure applicable to, any court or other authority under any law relating to the naval, military and air force or other armed forces of the Union will not be affected by this Bill.

Clause 56.—This clause provides that the provisions of this Bill shall have overriding effect over the provisions of other enactments.

Clause 57.—This clause provides for protection against prosecution or other legal proceeding for action taken in good faith by the Central Government or a State Government or any officer or authority of that Government under this Bill.

Clause 58.—This clause provides for punishment in cases where any police officer exercises powers under this Bill corruptly or maliciously.

Clause 59.—This clause provides for impounding of passport and arms licence of a person charge sheeted for having committed an offence under this Bill.

Clause 60.—This clause provides for constitution of Review Committees by the Central Government or the State Governments, as the case may be, for the purposes of this Bill.

Clause 61.—This clause confers upon the High Court the power to make rules relating to Special Courts.

Clause 62.—This clause confers powers upon the Central Government to make rules for carrying out the provisions of this Bill.

Clause 63.—This clause provides that the orders and rules made by the Central Government under this Bill shall be laid before each House of Parliament within the stipulated time.

Clause 64.—This clause seeks to repeal the Prevention of Terrorism (Second) Ordinance, 2001.

FINANCIAL MEMORANDUM

Clause 23 of the Prevention of Terrorism Bill, 2002 provides for constitution of Special Courts by the Central Government or the State Government and also for appointment of Judges and Additional Judges of those Courts. Clause 28 of the said Bill provides for appointment of Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor by the Central Government or the State Government, as the case may be.

2. The expenditure towards the setting up of Special Courts by the State Governments and towards salary and allowances of the Judges, Additional Judges, Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors and the staff of such Courts will be defrayed out of the Consolidated Fund of the States concerned. The expenditure towards setting up of Special Courts by the Central Government in any State or Union territory will be met out of the Consolidated Fund of India. The likely expenditure on each Special Court and on the salary and allowances of the Judges, Additional Judges, Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors and the staff of such Courts for five months is expected to be Rs. 20 lakhs out of which Rs. 10 lakhs would be of a recurring nature and Rs. 10 lakhs of a non-recurring nature. As it is not possible at this stage to visualize the number of such Courts that may have to be established, it is, therefore, not possible to give an estimate of actual expenditure that may have to be incurred on this behalf.

3. Sub-clause (1) of clause 60 of this Bill, provides, *inter alia*, for constitution of one or more Review Committees by the Central Government. Some expenditure of a recurring nature will have to be incurred in connection with the Review Committees and it is not possible at this stage to make an accurate estimate of the expenditure which may be involved.

4. The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 19 of the Bill empowers the Central Government to make rules to prescribe the procedure for admission and disposal of an application made under sub-clause (1) of clause 19.

2. Clause 61 of the Bill empowers the High Courts to make such rules, if any, as they may deem necessary for carrying out the provisions of the Bill relating to Special Courts within their territories.

3. Clause 62 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill to provide for all or any of the following matters, namely:—

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of any vehicle, vessel, or air craft; or any place, whatsoever;

(c) conferring powers upon the Central Government, State Government, Administrator of a Union territory under article 239 of the Constitution, an officer of the Central Government not lower in rank than that of a Joint Secretary, or an officer of a State Government not lower in rank than that of a District Magistrate to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contraventing any of the rules or any order made thereunder;

(e) punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made there under with imprisonment for a term which may extend to one year or fine or both;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in item (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(g) determination of the price of the forfeited property under sub-clause (2) of clause 10;

(h) the procedure for admission or disposal of an application under sub-section (3) of clause 19;

(i) the qualification of the members of the Review Committee under sub-clause (2) of clause 60.

4. The matters in respect of which the rules may be made under the foregoing provisions relate to matters of details or procedure. The delegation of legislative power is, therefore, of a normal character.

VI

BILL NO. 14 OF 2002

A Bill further to amend the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 so as to provide for inclusion of certain Scheduled Castes and Scheduled Tribes oustees of the States of Madhya Pradesh and Maharashtra, who have been displaced due to Sardar Sarovar Project on the Narmada River and are settled or may be settled in the State of Gujarat, in the lists of Scheduled Castes and Scheduled Tribes specified in relation to the State of Gujarat.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002.

Amendment
of the
Constitution
(Scheduled
Castes) Order,
1950.

2. In the Schedule to the Constitution (Scheduled Castes) Order, 1950, in PART IV.—Gujarat, after entry 30, the following entries shall be inserted, namely:—

"31. Balahi, Balai

32. Bhangi, Mehtar

33. Chamar

34. Chikwa, Chikvi

35. Koli, Kori

36. Kotwal (in Bhind, Dhar, Dewas, Guna, Gwalior, Indore, Jhabua, Khargone, Mandsaur, Morena, Rajgarh, Ratlam, Shajapur, Shivpuri, Ujjain and Vidisha districts)".

3. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in PART IV.—*Gujarat*, after entry 29, the following entries shall be inserted, namely:—

"30. Bhil, Bhilala, Barela, Patelia

31. Tadvi Bhil, Pawra, Vasave

32. Padvi".

Amendment
of the
Constitution
(Scheduled
Tribes) Order,
1950.

STATEMENT OF OBJECTS AND REASONS

On account of implementation of the Sardar Sarovar Project over the Narmada River, sizeable number of persons belonging to Scheduled Castes and Scheduled Tribes residing in States of Madhya Pradesh and Maharashtra have been forced to migrate to the State of Gujarat, where they are being rehabilitated. Such persons are not entitled to the benefits of Scheduled Castes and Scheduled Tribes in the State of Gujarat as the lists of Scheduled Castes and Scheduled Tribes are State specific.

2. In the State of Gujarat, those Scheduled Castes and Scheduled Tribes families, which shifted from the States of Madhya Pradesh and Maharashtra, are suffering from similar type of deprivation as faced by Scheduled Castes and Scheduled Tribes of Gujarat. Keeping in view these factors, the list of Scheduled Castes and Scheduled Tribes for Gujarat is proposed to be amended specifically incorporating the Scheduled Castes and Scheduled Tribes of Madhya Pradesh and Maharashtra after their ouster from the Sardar Sarovar Project.

3. The proposed amendments as contained in the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Bill, 2002 fall under the following two categories:—

(i) inclusion of Scheduled Castes oustees of Sardar Sarovar Project from the States of Madhya Pradesh and Maharashtra as new castes in the list of the Scheduled Castes in respect of the State of Gujarat; and

(ii) inclusion of Scheduled Tribes oustees of Sardar Sarovar Project from the States of Madhya Pradesh and Maharashtra as new tribes in the list of the Scheduled Tribes in respect of the State of Gujarat.

4. The Bill seeks to achieve the above objectives.

NEW DELHI,
The 20th February, 2002.

SATYANARAYAN JATTYA.

FINANCIAL MEMORANDUM

The Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Bill, 2002 seeks to continue Scheduled Castes and Scheduled Tribes status of persons belonging to Scheduled Caste and Scheduled Tribe communities of Madhya Pradesh and Maharashtra, who have been settled or to be settled in Gujarat following implementation of the Sardar Sarovar Project.

2. Once the Bill is passed, such oustees belonging to Scheduled Castes and Scheduled Tribes of Madhya Pradesh and Maharashtra will continue to get similar benefits in the State of Gujarat. There will be no additional expenditure out of the Consolidated Fund of India on the enactment of the Bill.

G. C. MALHOTRA,
Secretary-General.

